

ASSEMBLY BILL

No. 1860

Introduced by Assembly Member Huffman
(Coauthors: Assembly Members Feuer and Ma)
(Coauthor: Senator Migden)

January 30, 2008

An act to add Chapter 2 (commencing with Section 108040) to Part 3 of Division 104 of, and to repeal the heading of Chapter 2 of Part 3 of Division 104 of, the Health and Safety Code, relating to product safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1860, as introduced, Huffman. Unsafe products: recall or warning.

Existing federal law authorizes the United States Consumer Product Safety Commission to establish and enforce product safety standards that it finds necessary to protect against unreasonable risk of injury. Once the commission staff determines a product violates a specific statute or regulation, the staff notifies the responsible manufacturer, importer, distributor, or retailer, and assists the responsible firm with the development and implementation of a remedial repair, replacement, or refund program, also known as a recall.

Existing state law provides for the establishment and enforcement of various product safety standards for consumer products, including, among others, requiring specified warning labels for water heaters, and prohibiting the sale of contaminated toys and lead-tainted tableware.

Existing state law prohibits the manufacture, production, preparation, compounding, packing, selling, offering for sale, or keeping for sale within the State of California, or the introduction into this state, of a misbranded hazardous substance or banned hazardous substance. Any

violation of this provision is punishable as a misdemeanor. Existing law requires the manufacturer, distributor, or retailer of any banned hazardous substance to repurchase the article or substance from the person to whom it was sold, and to refund the purchase price paid.

This bill would prohibit a commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer from knowingly manufacturing, remanufacturing, retrofitting, distributing, selling at wholesale or retail, contracting to sell or resell, leasing, or subletting, or otherwise placing into the stream of commerce, a product that is unsafe, as specified. The bill would provide for an unsafe product to be retrofitted, and would permit the sale of the retrofitted product if accompanied by a specified notice.

The bill would require a commercial dealer, manufacturer, importer, distributor, or wholesaler that has placed into the stream of commerce a product for which a recall or warning has subsequently been issued to initiate specified steps within 24 hours after issuing or receiving the recall notice or warning, including contacting all of its customers, other than end consumers, to whom it sold, leased, sublet, or transferred that particular product, and posting prominently on its Web site a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question and other specified information.

The bill would require the manufacturer of the product to provide for the safe return of the product to the manufacturer at no cost to the end consumer or retailer, and would require the manufacturer to properly dispose of the product and not export the product, or permit it to be exported, for disposal in a manner that poses a significant risk to the public health or the environment. The bill would require the manufacturer to prepare and, at the request of the Department of Toxic Substances Control, submit within 28 days of the date of the request, technical documentation or other information showing that the manufacturer complied with these requirements. The bill would impose additional requirements upon retailers of products determined to be unsafe, including removing the product from the shelves of its stores or programming its registers to ensure that the item cannot be sold, within 3 days after receiving the recall notice or warning of the unsafe product.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 2 of Part 3 of Division 104 of the Health and Safety Code is repealed.

~~CHAPTER 2. POWERS AND DUTIES (RESERVED)~~

SEC. 2. Chapter 2 (commencing with Section 108040) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

CHAPTER 2. PRODUCT RECALL SAFETY AND PROTECTION ACT

108040. This chapter shall be known, and may be cited, as the Product Recall Safety and Protection Act.

108042. As used in this chapter, the following terms have the following meanings:

(a) "Commercial dealer" means any person who deals in products or who otherwise by his or her occupation holds himself or herself out as having knowledge or skill peculiar to products, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing into the stream of commerce, a product.

(b) "Distributor" and "wholesaler" means any person, other than a manufacturer or retailer, who sells or resells, or otherwise places into the stream of commerce, a product.

(c) "End consumer" means a person who purchases a product for any purpose other than resale.

(d) "First seller" means any retailer selling a product that has not been used or has not previously been owned. A first seller does not include an entity such as a second-hand retail dealer, thrift shop, resale store, or any other establishment or individual, agent, or employee thereof that sells, distributes, rents, or leases products of any kind.

(e) "Importer" means any person who brings into this country, and places into the stream of commerce, a product.

(f) "Manufacturer" means any person who makes, and places into the stream of commerce, a product.

(g) "Person" means a natural person, firm, corporation, limited liability company, or association, or an employee or agent thereof.

1 (h) “Product” means an item that is designed or intended for
2 use by the general population or segments of the general
3 population. “Product” does not include any medication, drug, or
4 food, or other item intended to be ingested.

5 (i) “Recall” means any repair, replacement, or refund program
6 implemented in accordance with state or federal law upon a
7 determination that a product violates a statute or regulation, and
8 notification to the product manufacturer, importer, distributor, or
9 retailer that corrective action to address the violation is warranted.

10 (j) “Retailer” means any person other than a manufacturer,
11 distributor, or wholesaler who sells, distributes, sublets, or leases
12 consumer goods of any kind.

13 (k) “Sell” or “sale” means a transfer for consideration of title
14 or of the right to use, by lease or sales contract, including, but not
15 limited to, transactions conducted through sales outlets, catalogs,
16 or the Internet or any other, similar electronic means.

17 108044. (a) No commercial dealer, manufacturer, importer,
18 distributor, wholesaler, or retailer shall knowingly manufacture,
19 remanufacture, retrofit, distribute, sell at wholesale or retail,
20 contract to sell or resell, lease, or sublet, or otherwise place into
21 the stream of commerce, a product that is unsafe.

22 (b) A product shall be deemed unsafe for purposes of this
23 chapter only if it meets one or more of the following criteria:

24 (1) The product does not conform to state and federal laws and
25 regulations setting forth standards for the product.

26 (2) The product has been recalled for any reason, or it has been
27 recalled in cooperation with an agency of the federal government
28 or the product’s commercial dealer, manufacturer, importer,
29 distributor, or wholesaler, and the recall has not been rescinded.

30 (3) A state or federal agency, or the product’s commercial dealer,
31 manufacturer, importer, distributor, or wholesaler, has issued a
32 warning that the intended use of a specific product constitutes a
33 safety hazard, and the warning has not been rescinded.

34 (c) (1) An unsafe product, as determined pursuant to subdivision
35 (b), may be retrofitted if the retrofit has been approved by the
36 agency issuing the recall or warning, or the agency responsible for
37 approving the retrofit if it is different from the agency issuing the
38 recall or warning.

1 (2) A retrofitted product may be sold if it is accompanied at the
2 time of sale by a notice declaring that it is safe to use. The notice
3 shall include all of the following:

4 (A) A description of the original problem that made the recalled
5 product unsafe.

6 (B) A description of the retrofit that explains how the original
7 problem was eliminated and declaring that it is now safe to use.

8 (C) The name and address of the commercial dealer,
9 manufacturer, importer, distributor, or wholesaler who
10 accomplished the retrofit, certifying that the work was done, along
11 with the name and model number of the product retrofitted.

12 (3) The commercial dealer, manufacturer, importer, distributor,
13 or wholesaler is responsible for ensuring that the notice described
14 in paragraph (2) is present with the retrofitted product at the time
15 of sale. This paragraph and paragraph (2) shall not apply if either
16 subparagraph (A) or (B) applies:

17 (A) The retrofit meets all of the following:

18 (i) The product requires assembly by the consumer.

19 (ii) The retrofit kit is provided with the product by the
20 commercial dealer, manufacturer, importer, distributor, or
21 wholesaler.

22 (iii) The retrofit kit is accompanied at the time of sale by
23 instructions explaining how to apply the retrofit.

24 (B) The seller of a previously unsold product accomplishes the
25 approved or recommended repair prior to sale.

26 108046. (a) A commercial dealer, manufacturer, importer,
27 distributor, or wholesaler that has placed into the stream of
28 commerce any product for which a recall or warning has
29 subsequently been issued, shall initiate the following steps within
30 24 hours after issuing or receiving the recall notice or warning:

31 (1) Contact all of its customers, other than end consumers, to
32 whom it sold, leased, sublet, or transferred that particular product.
33 The contact shall be made to a person designated for that product
34 by the customer and shall include a copy of the recall notice or
35 warning.

36 (2) If the commercial dealer, manufacturer, importer, distributor,
37 or wholesaler maintains a Web site, the entity shall place
38 prominently on the home page or first point of entry of its Web
39 site, a link to recall or warning information that contains the
40 specific recall notice or warning that was issued for the product

1 in question. The recall or warning information shall include a
2 description of the product, the reason for the recall or warning, a
3 picture of the product, and instructions on how to participate in
4 the recall or warning. The information shall include only the
5 product recall or warning information and shall not include sales
6 or marketing information on that product or any other product,
7 excluding return and exchange policies. The recall or warning
8 information shall permit participation in the recall or warning
9 through the Web site of the commercial dealer, manufacturer,
10 importer, distributor, or wholesaler.

11 (3) If the commercial dealer, manufacturer, importer, distributor,
12 or wholesaler sold directly to an end consumer, and the consumer
13 provided either a shipping address or e-mail address at the time of
14 sale or that consumer contact information is otherwise on file, then
15 the commercial dealer, manufacturer, importer, distributor, or
16 wholesaler shall send a notice of the recall or warning to the
17 consumer at each of those addresses. The notice shall include a
18 description of the product, the reason for the recall or warning, a
19 picture of the product, and instructions on how to participate in
20 the recall or warning. The notice shall include only the product
21 recall or warning information and shall not include sales or
22 marketing information on that product or any other product,
23 excluding return and exchange policies.

24 (b) (1) The manufacturer of the product shall provide for the
25 safe return of the product to the manufacturer at no cost to the end
26 consumer or retailer.

27 (2) The manufacturer shall properly dispose of the product in
28 a manner that is in compliance with all applicable federal, state,
29 and local laws, regulations, and ordinances, and shall not export
30 the product, or permit it to be exported, for disposal in a manner
31 that poses a significant risk to the public health or the environment.

32 (3) The manufacturer shall prepare and, at the request of the
33 Department of Toxic Substances Control, submit within 28 days
34 of the date of the request, technical documentation or other
35 information showing that the manufacturer complied with
36 paragraphs (1) and (2).

37 (c) If a retailer receives notice of a recall or warning regarding
38 a product from a commercial dealer, manufacturer, importer,
39 distributor, wholesaler, or state or federal agency, and if the retailer

1 at any time offered the product for sale, then the retailer shall do
2 the following:

3 (1) Within three days after receiving the notice or warning by
4 the person designated by the retailer, the retailer shall remove the
5 product from the shelves of its stores or program its registers to
6 ensure that the item cannot be sold.

7 (2) If the product was sold through the retailer's Web site, then
8 within three days after receiving the notice or warning by the
9 person designated by the retailer, the retailer shall remove the
10 product from the Web site or remove the ability to purchase the
11 product through the Web site.

12 (3) If an e-mail or shipping address was provided at the time of
13 purchasing a product on the retailer's Web site for which a recall
14 or warning was subsequently issued, or if the retailer otherwise
15 has the purchaser's contact information on file, the retailer shall
16 contact the purchaser and send the recall notice or warning
17 information to each of those addresses. The recall notice or warning
18 information shall include a description of the product, the reason
19 for the recall or warning, a picture of the product, and instructions
20 on how to participate in the recall or warning. The information
21 shall include only the product recall or warning information and
22 shall not include sales or marketing information on that product
23 or any other product, excluding return and exchange policies. The
24 retailer shall comply with this paragraph within 30 days of
25 receiving the notice of the recall or warning.

26 (4) Within three days after receiving the recall notice or warning
27 by the person designated by the retailer, the retailer shall post in
28 a prominent location in each retail store the recall notice or
29 warning. The notice or warning shall remain posted for at least
30 120 days.

31 (5) If the product for which a recall or warning was issued was
32 sold on the retailer's Web site, the retailer shall within three days
33 after receiving the recall notice or warning by the person designated
34 by the retailer, post on the home page or first point of entry of its
35 Web site a link to recall or warning information that contains the
36 specific recall notice or warning that was issued for the product
37 in question. The recall or warning information shall include a
38 description of the product, the reason for the recall or warning, a
39 picture of the product, if one was provided, and instructions on
40 how to participate in the recall or warning. The information shall

1 include only the product recall or warning information and shall
2 not include sales or marketing information on that product or any
3 other product, excluding return and exchange policies.

4 (6) A retailer who is not a first seller shall comply with this
5 subdivision, except that the retailer has five days to comply with
6 paragraphs (1) and (2).

7 (7) A retailer who is a first seller shall accept any recalled
8 product for the purpose of returning it to the manufacturer or
9 distributor.

10 (d) A commercial dealer, manufacturer, importer, wholesaler,
11 or distributor who is also a retailer shall comply with subdivisions
12 (a), (b), and (c), as applicable.

13 108048. Nothing in this chapter relieves a commercial dealer,
14 manufacturer, importer, distributor, wholesaler, or retailer from
15 compliance with stricter requirements that may be imposed by an
16 agency of the federal government.